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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 69

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.,
Petitioners,

v.

JACKSONVILLE TERMINAL COMPANY, *Respondent.*

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

BRIEF FOR THE NATIONAL RAILWAY LABOR CONFERENCE AS AMICUS CURIAE

FRANCIS M. SHEA
RICHARD T. CONWAY
RALPH J. MOORE, JR.
734 Fifteenth Street, N.W.
Washington, D.C. 20005

JAMES A. WILCOX
1225 Connecticut Avenue
Washington, D.C. 20036
Attorneys for National Railway Labor Conference

Of Counsel:
SHEA & GARDNER
Washington, D.C.

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BRIEF FOR THE NATIONAL RAILWAY LABOR CONFERENCE AS AMICUS CURIAE

Interest of the Amicus Curiae

The National Railway Labor Conference, the *amicus curiae* on whose behalf this brief is submitted, represents over 95% of the nation's Class I line-haul rail carriers. (The carriers represented by the Conference are listed in Appendix A, *infra*.) The function of the Conference is to assist its members in connection with labor relations problems and to represent them in contract negotiations that are national in scope.

While the Conference speaks for virtually the entire railroad industry, it does not represent the Florida East Coast

Railway Company ("FEC") and therefore does not speak for that railroad. However, the Conference does represent most of the nation's major terminal companies. (See pp. 18-19, *infra*; and see listing in Appendix B, p. 23, *infra*). The terminal facilities operated by these companies sit astride many of the nation's principal railroad "gateways"—major connecting points between regions. Because of their strategic location, these companies are particularly vulnerable to the kind of secondary picketing which this case involves.

Thus, the Conference and its members will be directly affected by the outcome of this case. Because the Conference is so intimately involved in the operation of federal legislation affecting railway labor relations, we venture a word on behalf of the large portion of the industry represented by the Conference, with respect to the petitioners' principal contention that the picketing involved in this case is "protected" from state regulation by the Railway Labor Act and by the Clayton and Norris-LaGuardia Acts. See Petr. Br., pp. 27-73. Like the AFL-CIO, we limit our discussion to that issue. However, we have had the opportunity to read the Brief of Respondent and agree entirely with the arguments made therein, both with respect to petitioners' principal contention and with respect to other issues.

Statement

The Brief of Respondent sets forth an accurate and detailed statement of the facts, and we therefore see no need for a detailed statement here. For our purposes, it seems sufficient to say that the respondent Jacksonville Terminal Company, a Florida corporation, is a separate carrier for purposes of the Interstate Commerce Act and the Railway Labor Act. Its stock is owned by the users of its facilities,

the Seaboard Coast Line Railroad Company,[1] the Southern Railroad System, and the FEC. Petitioners are railway labor organizations and officials (JA 4, 21, 29, 57, 95, 309).

Petitioners have a dispute with the FEC as to the terms and conditions of employment on that railroad. The major dispute procedures of the Railway Labor Act (see 45 U.S.C. §§ 155-160) have been exhausted with respect to that dispute. Accordingly, petitioners and the FEC are free to use self-help against each other. See *Brotherhood of R. Train.* v. *Atlantic Coast Line R. Co.*, 362 F.2d 649, 650 (5th Cir., 1966), *affirmed by equally divided Court*, 385 U.S. 20 (1966).

On the other hand, petitioners have no dispute with respondent Jacksonville Terminal Company, or the owner-users of the Terminal other than FEC, as to the terms and conditions of employment on those carriers. Nevertheless, on May 4, 1966, petitioners stationed pickets at all except one of the entrances to the Terminal, urging the employees of the Terminal Company and the owner-user lines not to cross the picket line (JA 63, 75, 221, 244-45, 251-52, 300-06, 311). Thus, petitioners brought operations at the Terminal "virtually . . . to a standstill" (JA 216) and threatened the "economic strangulation" of the entire State of Florida (JA 183).

In this connection, we note that both petitioners and the AFL-CIO claim that the case involves only what they call "primary" picketing, to induce the employees of neutral employers not to provide services to a struck employer (FEC). See Petr. Br., pp. 61-65; AFL-CIO Br., pp. 25-32. It is our understanding, however, that petitioners' picketing was not limited to picketing which would prevent the interchange of cars with the FEC or the rendition of other

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[1] The Seaboard Coast Line is the merged successor to the Atlantic Coast Line and Seaboard Airline Railroad Companies. The Seaboard Coast Line owns 50% of the Terminal stock. Southern and the FEC each own 25% of the stock. See Resp. Br., p. 2.

services to the FEC. Instead, pickets were stationed at every entrance to the Terminal save one—the only entrance used by FEC car movements into the Terminal (JA 63). The picketed entrances included entrances where the trackage was under the exclusive control of the owner-user lines other than the FEC and where the entering cars would *not* be involved in interchange with the FEC. (See JA 63, 75, 216-17, 300-06; Resp. Br., p. 7 n. 10; and see map, Resp. Br., p. 9.) In short, in the words of petitioners' counsel, the idea was not simply to stop interchange with the FEC but to "stop all movement of rail traffic through the Jacksonville Terminal" (JA 195). See also *Brotherhood of R. Train.* v. *Atlantic Coast Line R. Co., supra,* 362 F. 2d, at 651.

In these circumstances, it strikes us as frivolous to claim that the case involves "primary" picketing only. Unlike the situation in *Steelworkers* v. *Labor Board,* 376 U.S. 492 (1964), on which petitioners and the AFL-CIO both rely, the picketing here was intended to, and did, induce employees of the Terminal Company to stop working for the Terminal, and the purpose of that was to make the Terminal and the owner-user lines hurt badly enough to force them to impose an embargo on the FEC (JA 66, 252-53, 259-60, 264; and see Resp. Br., pp. 14-15). That is "secondary" picketing under any definition—as the Court below concluded (JA 184). See *Brotherhood of R. Train.* v. *Atlantic Coast Line R. Co., supra,* 362 F. 2d, at 651; *Teamsters Union* v. *Morton,* 377 U.S. 252, 255, 256, 259 (1964); *Labor Board* v. *Servette,* 377 U.S. 46, 52-53 (1964); compare *Labor Board* v. *Fruit Packers,* 377 U.S. 58, 63-64 (1964).

Be that as it may, the question is whether the Florida court could enjoin the picketing which is involved in this case, by whatever name it is called. For reasons stated herein, we submit that it could properly do so.

Summary of Argument

The principal claim of both the petitioners and the AFL-CIO is that the Railway Labor, Clayton and Norris-LaGuardia Acts somehow protect secondary picketing in the railroad industry from any sort of regulation, state or federal. We disagree.

The major purpose of Congress in passing the Railway Labor Act was to provide a machinery to prevent interruptions to commerce and to railroad operations caused by strikes. Railway Labor Act, Section 2, 45 U.S.C. § 151a; *Texas & N. O. R. Co.* v. *Ry. Clerks*, 281 U.S. 548, 565 (1930). To that end, Congress provided machinery for the amicable resolution of the principal kinds of railway labor disputes —disputes as to representation, "minor" disputes as to the interpretation and application of agreements, and "major" disputes as to proposed changes in the terms and conditions of employment.

Petitioners have no representation dispute with any other unions and no minor or major dispute with respondent, and therefore the procedures established by the Railway Labor Act are not available to settle the dispute between petitioners and respondent. Instead, the dispute between petitioners and respondent is over petitioners' demand that respondent impose an embargo on the FEC, notwithstanding respondent's obligations under the Interstate Commerce Act, and in circumstances in which petitioners' picketing would constitute unlawful secondary pressure in any industry which unlike the railroad industry is subject to the Labor Management Relations Act.

In these circumstances, the claim that Congress intended to protect the kind of picketing involved in this case is wholly untenable. If Congress had intended to reach such picketing when it enacted the Railway Labor Act, it would have made it unlawful; thus, we think it clear that Congress left its regulation to the states. Accordingly, federal law

should not be held to preclude a state court injunction against the picketing, and the decision of the Florida District Court of Appeal should be affirmed.

The Clayton and Norris-LaGuardia Acts do not affect these conclusions. The Clayton Act restricted the remedial powers of *federal* courts, not state courts, and limited the substantive reach of *federal* legislation, not state law. Moreover, the Clayton Act was not intended by Congress to legalize secondary boycotts.

The Norris-LaGuardia Act went no farther. When Congress enacted Norris-LaGuardia, its purpose was to accomplish what it had attempted to accomplish when it enacted the Clayton Act but thought the federal courts had frustrated through their restrictive construction of the earlier enactment. Consequently, Norris-LaGuardia limited only the equitable powers of the federal courts and did not affect the application of state law or the remedial powers of state courts. Moreover, we submit that Norris-LaGuardia should not be held to preclude an injunction, even in federal court, in a case of this kind, because, just as the dispute in this case is not among the kinds of disputes which Railway Labor Act procedures can be invoked to settle, so, too, the dispute is not a "labor dispute" within the scope of Norris-LaGuardia. While we recognize that the Fifth Circuit's decision in *Brotherhood of R. Train.* v. *Atlantic Coast Line R. Co., supra,* was to the contrary, this Court's affirmance in that case was by an equally divided Court and therefore lacks binding precedential effect in this Court.

ARGUMENT

The Railway Labor, Clayton, and Norris-LaGuardia Acts do not preclude state court injunctions against secondary picketing of rail carriers by railroad employees.

Petitioners and the AFL-CIO both contend that the secondary picketing involved in this case is, in effect, "pro-

tected" from state court injunctions by the Railway Labor Act and by the Clayton and Norris-LaGuardia Acts. We disagree with that contention.

As this Court has observed, "the major purpose of Congress in passing the Railway Labor Act was 'to provide a machinery to prevent strikes.'" *Texas & N. O. R. Co.* v. *Ry. Clerks*, 281 U.S. 548, 565 (1930). That purpose is expressed in the Act itself—"to avoid any interruption to commerce or to the operation of any carrier engaged therein" (45 U.S.C. § 151a).[2]

To achieve that purpose Congress provided machinery for the peaceful resolution of all the principal kinds of railway labor disputes. Under Section 2 Ninth of the Act (45 U.S.C. § 152 Ninth), disputes as to representation must be resolved by the National Mediation Board rather than by resort to self help. See *Virginian Ry.* v. *Federation*, 300 U.S. 515 (1937). Under Section 3 of the Act (45 U.S.C. § 153), grievances and other disputes as to the interpretation and application of collective bargaining agreements—the "minor" disputes of the railway labor world—must be determined by adjustment boards rather than by resort to self help. *Trainmen* v. *Chicago R. & I. R. Co.*, 353 U.S. 30 (1957). And Sections 5-10 of the Act (45 U.S.C. §§ 155-

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[2] The attitude of the Congress that enacted the Railway Labor Act toward strikes in the railroad industry was indicated in the Senate Report, quoted in *Texas & N. O. R. Co.* v. *Ry. Clerks, supra*, 281 U.S., at 566 n. 3, discussing a proposed amendment of Section 10 of the Act which would have forbidden strikes "eo nomine": "The objection that the bill should in express terms forbid strikes during the period of the inquiry by the emergency board and for 30 days thereafter is successfully met, in the opinion of the committee, by the contention that in forbidding a change in the conditions out of which a dispute arose, one of which and a very fundamental one is the relationship of the parties, it already forbids any interruption of commerce during the period referred to; and if strikes were in express terms forbidden for a given period there might be an implication that after that period strikes to interfere with the passage of the United States mails and with continuous transportation service might be made legal. In the opinion of the committee, this possible implication should be avoided." S. Rep. No. 222, 69th Cong., 1st Sess.

160) require the parties to disputes over proposed changes in the terms and conditions of employment—the "major" disputes of the railway labor world—to comply with procedures for the settlement of such disputes in conferences and through negotiation, mediation, arbitration, and conciliation, which "are purposefully long and drawn out, based on the hope that reason and practical considerations will provide in time an agreement that resolves the dispute." *Railway Clerks* v. *Florida E. C. R. Co.*, 384 U.S. 238, 246 (1966). Only after those procedures have been exhausted may the parties to a major dispute resort to self help against each other. See *Locomotive Engineers* v. *B. & O. R. Co.*, 372 U.S. 284, 291 (1963); *Railway Clerks* v. *Florida E. C. R. Co., supra*, 384 U.S., at 244; and see, generally, *Elgin, J. & E. R. Co.* v. *Burley*, 325 U.S. 711, 722-728 (1945).

The dispute between petitioners and respondent is not subject to any of those procedures, and therefore respondent has not been able to utilize those procedures in an attempt to settle the dispute without disruption of commerce. Petitioners are not engaged in a representation dispute with other unions. Petitioners have no "grievances" against respondent. Petitioners seek no changes in terms and conditions of employment from respondent. Rather, petitioners demand that respondent and the owner-user lines other than FEC cease doing business with FEC, notwithstanding the carriers' obligations under the Interstate Commerce Act "to provide and furnish transportation upon reasonable request therefor" (49 U.S.C. § 1(4)), "to establish reasonable through routes with other . . . carriers" (49 U.S.C. § 1(4)), and to provide "facilities for the interchange of traffic between their respective lines and connecting lines" (49 U.S.C. § 3(4)).

If the picketing in this case had been in an industry

which is subject to the Labor Management Relations Act, it would have been unlawful under Section 8(b)(4) (29 U.S.C. §158(b)(4)), which makes it an unfair labor practice for a labor organization to use "pressures," like those employed here, "calculated to induce the employees of a secondary employer to withhold their services in order to force their employer to cease dealing with the primary employer." *Labor Board* v. *Servette, supra,* 377 U.S., at 52-53; see also *Teamsters Union* v. *Morton, supra,* 377 U.S., at 255, 256, 259; and see pp. 3-4, *supra.* As petitioners show in their brief (Petr. Br., pp. 54-56), Congress did not apply that prohibition to disputes which are wholly within the railroad industry, "arguably" or otherwise, because Congress was informed that railroad employees, unlike employees in other industries, had not engaged in secondary picketing.[8]

In these circumstances, the claim that Congress intended to "protect" the kind of picketing involved in this case seems to us to be wholly untenable. If petitioners can shut down respondent because it handles cars which are interchanged with the FEC, they likewise can shut down virtually every railroad and terminal in the country because nearly all such carriers handle cars which originate or are destined for delivery on the FEC. They can thus cause widespread "interruptions to commerce" without notice to the affected carriers, much less conferences, negotiation, mediation and the like. It is clear that Congress intended to "protect" nothing of the sort when it enacted the Railway Labor Act "to provide a machinery to prevent

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[8] Thus, as Senator Taft explained, "I want to point out that railway labor has never been covered by the Wagner Act; it has always been covered by the Railway Labor Act, which provides a somewhat different procedure. *We saw no reason to change that situation, because there were no abuses which had arisen in connection with the operation of the Railway Labor Act . . . .*" 2 Leg. Hist. LMRA, 1947, p. 1571.

strikes" (281 U.S., at 565). If Congress had intended to reach such picketing at all, it would have made it unlawful. If Congress did not make it unlawful, see *Brotherhood of R. Train.* v. *Atlantic Coast Line R. Co., supra,* 362 F.2d, at 655, it must have meant to leave its regulation to the states. Under present law, petitioners' conduct must be governed by the states, or it is totally ungoverned. There is no conflict between the requirements of Florida law and the Railway Labor Act. There is no conflict between state and federal administrative regimes; administrative remedies under the Railway Labor Act are not applicable to this dispute. Compare *Hanna Mining* v. *Marine Engineers,* 382 U.S. 181 (1965); *Incres S.S. Co.* v. *Maritime Workers,* 372 U.S. 24 (1963); *Auto. Workers* v. *Wis. Board,* 336 U.S. 245 (1949). And there is not even any risk of conflicting remedies or adjudications in the courts, as long as the *Coast Line* decision, *supra,* deprives federal courts of the power to grant any effective remedy. Accordingly, federal law has not superseded state law in this case, and the decision of the Florida District Court of Appeal should be affirmed.

The Clayton and Norris-LaGuardia Acts do not affect these conclusions. The relevant Clayton Act provisions were born of concern over *federal* interference with the activities of organized labor under the Sherman Act. Accordingly, the Clayton Act "withdrew from the general interdict of the Sherman Law specifically enumerated practices of labor unions." *United States* v. *Hutcheson,* 312 U.S. 219, 230 (1941). That was done by providing that "[n]o restraining order or injunction shall be granted by any court *of the United States,*" against certain activities of organized labor, and that such activities shall not "be considered or held to be violations of any law *of the United States.*" 29 U.S.C. § 52 (emphasis added). Obviously, Congress could have added "or of any State" to both stat-

utory phrases if that had been intended.[4]

Thus, it is clear on the face of the Clayton Act that it does not affect this case. Its restrictions on the remedial powers of courts apply only to federal courts, not to the courts of Florida. Likewise, its "substantive" restrictions restrict only the application of laws "of the United States," not laws of the several states. And, in addition to these considerations, it is clear that Congress did not intend, by enacting the Clayton Act, to legalize secondary pressures of the kind which this case involves.[5]

The Norris-LaGuardia Act affords petitioners no additional comfort. As this Court has observed, "It was widely believed that into the Clayton Act courts read the very beliefs which the Act was designed to remove." *United States* v. *Hutcheson, supra,* 312 U.S., at 230. Accordingly, the Norris-LaGuardia Act was enacted to remove "the fetters

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[4] By way of contrast (as petitioners point out in their brief) the original version of the Clayton Act provision that specified kinds of conduct shall not "be considered or held to be violations of any law of the United States" would have provided simply that such conduct shall not "be considered or held unlawful." Petr. Br., p. 25; 51 Cong. Rec. 9652 (1914).

[5] Congressman Webb, who steered the bill through the House, made this clear during the House debate: "[T]his section was drawn . . . with the careful purpose not to legalize the secondary boycott, and we do not think it does . . . . [I]t is the opinion of the committee that it does not legalize the secondary boycott and is not intended to do so." 51 Cong. Rec. 9652 (1914). "[This section] was drawn carefully, and those who drew this section drew it with the idea of excluding the secondary boycott. It passed the House . . . and the question of the secondary boycott was not raised then, because we understood so clearly it did not refer to or authorize the secondary boycott." *Id.* at 9653. "I should vote for the amendment . . . if I were not perfectly satisfied that it is taken care of in this section [§ 20]. The language the gentleman reads does not authorize the secondary boycott, and he could not torture it into any such meaning . . . . I say again—and I speak for, I believe, practically every member of the Judiciary Committee—that if this section did legalize the secondary boycott there would not be a man vote for it. It is not the purpose of the committee to authorize it, and I do not think any person in this House wants to do it. We confine the boycotting to the parties to the dispute . . . ." *Id.*, at 9658.

upon trade union activities, which according to judicial construction § 20 of the Clayton Act had left untouched, by still further narrowing the circumstances under which the *federal* courts could grant injunctions in labor disputes." *United States* v. *Hutcheson, supra,* 312 U.S., at 231 (emphasis added). "The underlying aim of the Norris-LaGuardia Act was to restore the broad purpose which Congress thought it had formulated in the Clayton Act but which was frustrated, so Congress believed, by unduly restrictive judicial construction. This was authoritatively stated by the House Committee on the Judiciary. 'The purpose of the bill is to protect the rights of labor in the same manner the Congress intended when it enacted the Clayton Act, . . . which act, by reason of its construction and application by the *Federal* courts, is ineffectual to accomplish the congressional intent.'" *Id.,* at 235-236, quoting H. Rep. No. 669, 72d Cong., 1st Sess., p. 3 (emphasis added).

In short, Congress set out to clip the wings of the federal courts. Congress accomplished that purpose by providing that "[n]o court *of the United States* . . . shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter. . . ." 29 U.S.C. § 101.[6] As was true of the Clayton Act, Congress could have added "or of any

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[6] See also 29 U.S.C. § 102 ("the following definitions of and limitations upon the jurisdiction and authority of the courts *of the United States* are enacted"); § 103 (yellow dog contracts "shall not be enforceable in any court *of the United States*"); § 104 ("[n]o court *of the United States* shall have jurisdiction to issue" injunctions against enumerated acts); § 105 ("[n]o court *of the United States* shall have jurisdiction" to issue injunctions against alleged conspiracies to commit acts enumerated in § 104); § 106 (members of labor organizations shall not "be held responsible or liable in any court *of the United States*" for others' unlawful acts in which they do not participate, etc.); § 107 ("[n]o court *of the United States* shall have jurisdiction" to issue injunctions except upon certain proof).

State" if it had desired to do so and believed it had the power. Instead, it provided that the "term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia." 29 U.S.C. § 113(d). Thus, it defined the term to leave no doubt that only federal courts were included.

Thus, it is apparent on the face of the Norris-LaGuardia Act that it is inapplicable to this case, which was determined in the Florida courts. As stated by Justice Traynor, the Norris-LaGuardia Act "aimed to restrict the federal equity power, and was justified constitutionally on the basis of Congress' power to regulate the jurisdiction of the federal courts. . . . It did not limit the remedial power of the state courts. . . ." *McCarroll* v. *Los Angeles Dist. Council*, 49 Cal. 2d 45, 93, 315 P. 2d 322, 332 (1957). Norris-LaGuardia "explicitly applies only to the authority of United States courts 'to issue any restraining order or injunction.' All other remedies in federal courts and all remedies in state courts remain available." Frankfurter & Greene, *The Labor Injunction* (1930), p. 220.[7]

Moreover, while we recognize that *Brotherhood of R. Train.* v. *Atlantic Coast Line R. Co., supra,* is to the contrary, we submit that the Norris-LaGuardia Act should not

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[7] To the same effect, see *American Dredging Co.* v. *Local 25*, 338 F. 2d 837, 850-856 (3d Cir., 1964); *Ford* v. *Boeger*, 236 F. Supp. 831, 837 (E.D. Mo., 1964); *United Electrical Workers* v. *Westinghouse Elec. Corp.*, 65 F. Supp. 420 (E.D. Pa., 1946); *Shaw Electric Co.* v. *Electrical Workers*, 418 Pa. 1, 208 A. 2d 769, 775-776 (1965); *Philadelphia Marine Trade Ass'n* v. *International Longshoremen's Ass'n*, 382 Pa. 326, 115 A. 2d 733, 736 (1955); *General Bldg. Contractors' Ass'n* v. *Local Unions*, 370 Pa. 73, 87 A. 2d 250 (1952); *Curtis* v. *Tozer*, 374 S.W. 2d 557, 590-92 (Mo. App., 1964); *C. D. Perry & Sons, Inc.* v. *Robilotto*, 39 Misc. 2d 147, 240 N.Y.S. 2d 331 (Sup. Ct., 1963); *Southern Bus Lines* v. *Amalgamated Ass'n*, 205 Miss. 354, 38 So. 2d 765, 770 (1949); *Markham & Callow* v. *International Woodworkers*, 170 Ore. 517, 567-68, 135 P. 2d 727, 746 (1943).

be held to preclude an injunction, even in federal court, in a case of this kind. The Act precludes injunctions only in cases "involving or growing out of a labor dispute" (29 U.S.C. § 101), and this is not such a case. A "labor dispute" is defined in Norris-LaGuardia in terms similar to the terminology used in defining the disputes which are subject to the procedures established by the Railway Labor Act (see pp. 7-8, *supra*). That is, for purposes of Norris-LaGuardia, a "labor dispute" means "any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment." 29 U.S.C. § 113(c). There is no "controversy concerning terms or conditions of employment, or . . . representation," between petitioners and respondent. Therefore, just as the dispute between petitioners and respondent is not a dispute which is subject to the procedural requirements of the Railway Labor Act, so, too, the dispute is not a "labor dispute" for purposes of Norris-LaGuardia.[8] The reach of the two statutes should be held to be similar for these purposes, because the purpose of the Railway Labor Act was "to provide a machinery to prevent strikes," and this Court has repeatedly authorized the use of injunctive relief to carry out the objectives of the Railway Labor Act.[9] *Train-*

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[8] To be sure, there is a "labor dispute" between petitioners and the FEC, but this case does not "involve or grow out of" *that* dispute, because respondent is not a "person participating or interested in" that dispute, in that no "relief is sought against him or it" in that dispute. See 29 U.S.C. § 113(a), (b).

[9] As Mr. LaGuardia explained during the House debate on Norris-LaGuardia:

> Mr. Lankford: "Does this make it possible for lack of an injunction to tie up railroads and prevent them from transporting milk, for instance?"
>
> Mr. LaGuardia: "[T]he railroad labor act . . . takes care of the whole labor situation pertaining to the railroads. They could not

men v. *Chicago R. & I. R. Co., supra,* 353 U.S., at 41; *Locomotive Engrs.* v. *L. & N. R. Co.,* 373 U.S. 33, 42 (1963); *Trainmen* v. *Howard,* 343 U.S. 768, 774 (1952); *Virginian Ry.* v. *Federation, supra,* 300 U.S., at 563. To the extent that *Brotherhood of R. Train.* v. *Atlantic Coast Line R. Co. supra,* is contrary to these contentions, it departed from a long line of decisions by this Court and should not, we submit, be followed. This Court's affirmance in that case was by an equally divided Court and therefore lacks binding precedential effect in this Court.[10]

In short, we think it clear that neither the Railway Labor Act nor the Clayton and Norris-LaGuardia Acts precluded the entry of a state court injunction against the picketing of the Jacksonville Terminal.

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possibly come under this for the reason that we provided the machinery there for settling labor disputes."

Mr. Lankford: "It does not apply to the transportation of . . . necessities that go in interstate commerce?"

Mr. LaGuardia: "Interstate traffic is entirely covered in the railroad labor act of 1926." 75 Cong. Rec. 5499 (1932). To same effect, see pp. 5478, 5504.

[10] We note that in *Dowd Box Co.* v. *Courtney,* 368 U.S. 502, 512 n. 8 (1964), and *Avco Corp.* v. *Aero Lodge 735,* 390 U.S. 557, 560 n. 2, 561 n. 4 (1968), this Court reserved the question whether Norris-LaGuardia restrictions are a part of the corpus of substantive federal labor law which governs suits under § 301 of the LMRA, in whatever court such suits are brought. See *Textile Workers Union* v. *Lincoln Mills,* 353 U.S. 448 (1957); *Teamsters Local* v. *Lucas Flour Co.,* 369 U.S. 95 (1962). With respect to that question, we agree with the view that Section 301 "does not embody any policy that requires a state court enforcing rights created by that section to withhold injunctive relief." *McCarroll* v. *Los Angeles Dist. Council, supra,* 315 P. 2d, at 332. Be that as it may, no analogous question could arise in this case if it is held that the Railway Labor Act does not apply to secondary picketing in the railroad industry, so that regulation of such picketing is left to the states. And even if this suit were governed by substantive federal railway labor law, it would stand on an entirely different footing from a § 301 suit because of the rule, noted above, that Norris-LaGuardia does not preclude injunctions which serve the purposes of the Railway Labor Act.

Conclusion

For the foregoing reasons, the decision of the Florida District Court of Appeal should be affirmed.

Respectfully submitted,

FRANCIS M. SHEA
RICHARD T. CONWAY
RALPH J. MOORE, JR.
734 Fifteenth Street, N.W.
Washington, D.C. 20005

JAMES A. WILCOX
1225 Connecticut Avenue
Washington, D.C. 20036
Attorneys for National Railway Labor Conference

Of Counsel:
SHEA & GARDNER
Washington, D.C.

APPENDIX A

Railroads Represented By National Railway Labor Conference

Class I Line Haul Railroads

Akron, Canton & Youngstown
Ann Arbor
Atchison, Topeka & Santa Fe
Baltimore and Ohio
Bangor and Aroostook
Bessemer and Lake Erie
Boston and Maine
Burlington Lines:
  Chicago, Burlington & Quincy
  Colorado and Southern
  Ft. Worth and Denver
Central Vermont
Central RR of New Jersey
Chesapeake and Ohio
Chicago & Eastern Illinois
Chicago & Illinois Midland
Chicago and North Western
Chicago, Milwaukee, St. Paul & Pacific
Chicago, Rock Island & Pacific
Clinchfield
Delaware & Hudson
Denver & Rio Grande Western
Detroit & Toledo Shore Line
Detroit, Toledo & Ironton
Duluth, Missabe & Iron Range
Duluth, Winnipeg & Pacific
Elgin, Joliet & Eastern
Erie Lackawanna
Georgia
Grand Trunk Western
Great Northern
Gulf, Mobile & Ohio
Illinois Central
Illinois Terminal

Kansas City Southern
Louisiana & Arkansas
Lake Superior & Ishpeming
Lehigh Valley
Long Island
Louisville & Nashville
Maine Central
Missouri-Kansas-Texas
Missouri Pacific
Monon
New York, New Haven & Hartford
Norfolk & Western
Norfolk Southern
Northern Pacific
Northwestern Pacific
Penn Central
Pennsylvania-Reading Seashore
Piedmont & Northern
Reading
Richmond, Fred. and Potomac
St. Louis-San Francisco
St. Louis Southwestern
Seaboard Coast Line
Soo Line
Southern Railway System
Central of Georgia
Cincinnati, New Orleans & Texas Pacific
Alabama Great Southern
New Orleans & Northeastern Railroad
Georgia Southern & Florida
Southern Pacific
Spokane, Portland & Seattle
Texas & Pacific
Toledo, Peoria & Western
Union Pacific
Western Maryland
Western Pacific

Class I Switching and Terminal Companies

Alton & Southern
Baltimore & Ohio Chicago Terminal

Belt Railway of Chicago
Chicago and Western Indiana
Chicago Union Station Co.
Cincinnati Union Terminal
Houston Belt & Terminal
Indiana Harbor Belt
Kansas City Terminal
Kentucky & Indiana Terminal
Monongahela Connecting
Ogden Union Ry. & Depot
Portland Terminal Company
Portland Terminal Railroad
Port Terminal RR. Association
River Terminal
Terminal RR. Assn. of St. Louis
Union Railroad (Pittsburgh)
Washington Terminal

All Other Railroads

Abilene & Southern Railway
Akron & Barberton Belt
Atlanta and West Point
Western Ry. of Alabama
Baltimore & Eastern Railroad
Bauxite & Northern
Birmingham Southern
Boston Terminal
Brooklyn Eastern Dist. Term.
Buffalo Creek
Bush Terminal
Butte, Anaconda & Pacific
Camas Prairie
Canadian National Lines in New England & New York
Chicago Heights Terminal Transfer Railroad
Chicago & Illinois Western Railroad
Chicago River & Indiana
Chicago Produce Terminal
Chicago Short Line
Chicago South Shore & South Bend
Chicago West Pullman & Southern
Cleveland Union Terminals

Colorado & Wyoming
Columbia & Cowlitz
Columbus & Greenville
Curtis Bay RR.
Davenport, Rock Island & N.W.
Dayton Union
Denver Union Terminal
Des Moines Union
Detroit & Mackinac
Detroit Terminal
Doniphan, Kensett & Searcy
Duluth Union Depot & Transfer
East Erie Commercial
East St. Louis Junction
El Paso Union Passenger Depot
Fort Street Union Depot
Ft. Worth Belt
Gainesville Midland
Galveston, Houston & Henderson
Galveston Wharves
Genesee & Wyoming
Georgia Southern & Florida
Green Bay & Western Kewaunee
Green Bay & Western
Greenwich & Johnsonville Ry.
Harriman & Northeastern
Illinois Northern
Indianapolis Union
Iowa Transfer Railway
Ironton Railroad
Jacksonville Terminal
Joint Texas Division C.R.I.&P.-F.W.&D.
Joplin Union Depot Company
Kansas City, Shreveport & Gulf Terminal
Kansas, Oklahoma & Gulf
King Street Passenger Station
Lake Erie, Franklin & Clarion
Lake Superior Terminal & Transfer
Lake Terminal
Lehigh & Hudson River

Lehigh & New England
Longview, Portland & Northern
Los Angeles Junction
Manufacturers
McKeesport Connecting
Minneapolis Eastern
Minneapolis Industrial Ry.
Minneapolis, Dakota & Western
Minneapolis, Northfield & Southern
Minnesota & Manitoba Railway
Minnesota Transfer
Mississippi Export
Missouri-Illinois Railroad
Monongahela
Montour
Nevada Northern
Newburg & South Shore
New Orleans & Lower Coast
New Orleans Public Belt
New Orleans Terminal Co.
New Orleans Union Psgr. Terminal
New York Connecting
New York Dock
New York & Long Branch
New York, Susquehanna & Western
Norfolk & Portsmouth Belt Line
Northampton & Bath
Oregon, California & Eastern
Oregon Electric Ry.
Oregon Trunk Ry.
Pacific Coast Railroad
Peoria & Pekin Union
Peoria Terminal Co.
Philadelphia, Bethlehem & New England
Pittsburgh & Ohio Valley
Pittsburg & Shawmut
Pittsburgh, Chartiers & Youghiogheny
Port Authority Trans-Hudson
Pueblo Joint Interchange Bureau
Railway Transfer Co. of City of Minneapolis

Richmond Terminal
St. Johns River Terminal
St. Joseph Terminal
St. Paul Union Depot
Sacramento Northern Railway
San Diego & Arizona Eastern
Sioux City Terminal
South Omaha Terminal
Spokane International
Staten Island Rapid Transit
Strouds Creek & Muddlety
Tampa Union Station
Tavares & Gulf
Tennessee, Alabama & Georgia
Tennessee Central
Terminal Ry. Alabama State Docks
Texarkana Union Station Trust
Texas Mexican
Texas-New Mexico Ry.
Texas Pacific-Missouri Pacific Terminal of New Orleans
Toledo Terminal
Union Depot Co. (Columbus, O.)
Union Freight (Boston)
Union Terminal (Dallas)
Union Terminal Ry. of St. Joseph
Upper Merion & Plymouth
Walla Walla Valley Ry.
Wichita Terminal Association
Wichita Union Terminal
Winston Salem Southbound
Youngstown & Northern
Youngstown & Southern Railway
Weatherford, Mineral Wells & Northwestern Ry.

APPENDIX B

Typical Terminal Companies

From Moody's Transportation Mannual, September 1967

(1) Page	(2) Road or Company	(3) Operates Passenger and *Express Terminal	(4) Operates Freight Terminal or Service	(5) Miles of Track Operated	(6) No. of Employees (Dec. 1966)	(7) (1966) Operating Revenue or Gross Income	(8) Serves or Connects With —Railroads	(9) Owned By —Railroads	(10) No. of Roads Which are both Owners and Users
521	*Jacksonville Terminal Co.	x	x	49.67	691	$ 129,974	3	3	3
1	*Belt Ry. Co. of Chicago		x	443.72	1,270	15,134,625	25	12	12
3	*Chicago Union Sta. Co.	x		13.31	1,164	2,073,685	4	3	3
6	*Cincinnati Union Term. Co.	x		47.44	786	439,607	7	7	7
202	*Kansas City Term. Ry. Co.	x	x	102.67		969,488	12	12	12
422	*Term. R.R. Assoc. of St. Louis	x	x	336.77	3,225	24,505,565	21	15	15
426	*The Toledo Terminal R.R. Co.	x	x	76.31	135	1,129,731	7	5	5
543	*Buffalo Creek R.R. Co.		x	5.66	150	166,152	2	2	2
513	Augusta Union Sta. Co.	x		1.77	25	28,199	6	3	3
190	*Minnesota Transfer Ry. Co.		x	143.9	294	258,984	8	8	8
203	*Norfolk and Portsmouth Belt Line R.R. Co.		x	87.99	....	2,631,554	7	6	6
420	*St. Paul Union Depot Co.		x	12.59	642	443,921	8	8	8
425	Texas City Terms. Ry. Co.		x	35.38	98	160,590	3	3	3
510	Akron Union Passgr. Depot Co.		x	—0—	13	123,823	2	2	1
510	*Alton & Southern R.R.		x	135.6	594	6,904,273	21	2	2[1]
518	Denver Union Depot Co.	x	x	6.—	212	216,182	6	6	6
519	*Detroit Term. R.R. Co.		x	148.48	224	2,389,482		2	2
520	*Indianapolis Union Ry. Co.	x	x	71.18	511	1,260,892	6	6	6
522	Joplin Union Depot Co.	x	x	5.10	5	11,727	3	3	3
525	*Union Terminal Co. (Dallas)	x		17.14	199	.....	8	8	8
529	Lakefront Dock & Railway Terminal Co.		x	62.44	.....	645,218	2	2	2
530	*Odgen Union Ry. & Depot Co.	x	x	116.61	784	1,115,427	3	2	2
531	Richmond Term. Ry. Co.	x	x	7.70	84	198,231	3	2	2
532	*Washington Terminal Co.	x		49.65	2,165	106,220	5	2	2
534	*Wichita Union Terminal Ry. Co.	x		8.53	57	90,980	3	3	3
535	*El Paso Union Passgr. Depot Co.	x		4.84	45	19,598	3	3	3
538	*Portland Terminal R.R. Co.	x	x	73.49	789	597,619	5	3	2
539	*Union Depot Co. (Columbus, Ohio)	x		3.37	*85	93,583	4	2	2
541	Atlanta Terminal Co.	x		6.71	186	270,888	4	3	3
543	Chattanooga Station Co.	x		6.71	64	99,584	3	3	3
549	*Houston Belt & Terminal Co.	x	x	107.74	.....	1,541,620	4	4	4
557	N. Charleston Terminal Co.		x	17.81	.....	25,148	3	3	3

[1] Eff. 1968, See Moody, 1968 Supplement, page 1637.
* Represented by National Railway Labor Conference.